



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 679 and 680

[RTID 0648-XC495]

#### **Fisheries of the Exclusive Economic Zone off Alaska; Petition for Emergency Action to Close the Red King Crab Savings Area and Subarea to All Fishing Gear with Bottom Contact**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Announcement of receipt of petition for rulemaking; request for comments.

**SUMMARY:** NMFS announces the receipt of a petition for emergency rulemaking under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) from the Alaska Bering Sea Crabbers (ABSC). This petition requests NMFS take action to close the Red King Crab Savings Area (RKCSA) and Red King Crab Savings Subarea (RKCSS) to all fishing gear to protect Bristol Bay red king crab (BBRKC) and their habitat at a time of historically low crab abundance for a period of 6 months from January 1, 2023 to June 30, 2023.

**DATES:** Submit comments on or before December 5, 2022.

**ADDRESSES:** You may send comments, identified by Docket ID NOAA-NMFS-2022-0111 by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2022-0111 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (*e.g.*, name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Kelly Cates, 907-586-7228.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

This petition requests that NMFS take emergency action to close the RKCSA and RKCSS to all fishing gear with bottom contact (*i.e.*, bottom trawl, pelagic trawl, pot gear and longline gear). Section 305(c)(1) of the MSA states: “If the Secretary finds that an emergency exists or that interim measures are needed to reduce overfishing for any fishery, he may promulgate emergency regulations or interim measures necessary to address the emergency or overfishing, without regard to whether a fishery management plan exists for such fishery.” NMFS's Policy Guidelines for the Use of Emergency Rules require that an emergency must exist and that NMFS have an administrative record justifying emergency regulatory action and demonstrating compliance with the MSA and the National Standards (see NMFS Procedure 01-101-07; 62 FR 44421, August 21, 1997). Emergency rulemaking is intended for circumstances that are “extremely urgent,” where “substantial harm to or disruption of the . . . fishery . . . would be caused in the

time it would take to follow standard rulemaking procedures (62 FR 44421, August 21, 1997).”

Under NMFS's Policy Guidelines for the Use of Emergency Rules, the phrase “an emergency exists involving any fishery” is defined as a situation that meets the following three criteria:

1. Results from recent, unforeseen events or recently discovered circumstances;
2. Presents serious conservation or management problems in the fishery; and
3. Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process.

The RKCSA and RKCSS are areas of the Bering Sea that have been identified by the North Pacific Fishery Management Council (Council) and NMFS as important for BBRKC conservation and subject to multiple management actions over time to reduce non-directed fishery impacts to the BBRKC stock. The petitioner’s requested action would affect fisheries in the exclusive economic zone off Alaska managed under the fishery management plan (FMP) for the Bering Sea and Aleutian Islands Management Area (BSAI) King and Tanner Crab Fisheries (Crab FMP) and the FMP for Groundfish of the BSAI. The Council prepared these FMPs under the authority of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*). Regulations implementing the FMPs appear at 50 CFR parts 679 and 680.

The Crab FMP was approved by the Secretary of Commerce on June 2, 1989. The Crab FMP establishes a State/Federal cooperative management regime that delegates crab management to the State of Alaska with Federal oversight. State regulations are subject to the provisions of the Crab FMP, including its goals and objectives, the MSA, and other applicable Federal laws.

The abundance estimate calculated for mature female BBRKC using the eastern Bering Sea bottom trawl survey (Trawl Survey) data in 2021 and 2022 were the lowest two abundances on record since 1995. Using the data from the Trawl Survey, the State provided an abundance estimation that was below the State of Alaska regulatory harvest strategy threshold of 8.4 million mature female crab to open a directed fishery in 2021 and in 2022. As a result, the directed fishery was closed for the 2021-2022 and 2022-2023 seasons. While BBRKC are closed to directed fishing, the stock is not currently overfished or subject to overfishing.

### **Information in the Petition**

NMFS received the petition on September 29, 2022. The ABSC requests that the Secretary undertake emergency rulemaking to close the RKCSA and RKCSS to all fishing gears with bottom contact from January 1, 2023 to June 30, 2023 in order to protect BBRKC and their habitat at a time of historically low crab abundance. According to the petition filed by the ABSC, the reasons such action is needed through emergency rulemaking are:

1. The RKCSA is already closed year-round to bottom trawl gear to protect BBRKC and crab habitat from fishing impacts. In addition, in years when the directed fishery is closed, the RKCSS, the additional area to the south of the RKCSA, is also closed year-round to bottom trawl to protect crab and crab habitat.
2. BBRKC molting and mating occurs from January through June/July, and during this period their shells are soft, providing less protection from interaction with fishing gear and being handled. Therefore, impacts to the stock may be more intensive during this time period.
3. Closing these areas to all fishing gears known to contact the bottom (which would effectively add pelagic trawl, pot gear, and longline gear to the existing closure to bottom trawl gear) would provide additional protections for BBRKC and reduce

impacts on their habitat from fishing during a critical period of the crab life cycle.

This would help the stock rebuild to produce optimum yield over the long-term.

NMFS solicits comments on whether the request for rulemaking meets the requirements of section 305(c)(1) of the MSA and the likely benefits and impacts of NMFS taking the requested action. Comments received will be considered by NMFS in determining whether to proceed with the development of the emergency action suggested by ABSC. The Council will also consider the petition at its December Council Meeting and accept public comments at that time. NMFS will consider all comments submitted in response to this announcement and at the December Council Meeting. If NMFS approves the petition and undertakes an emergency rulemaking, the Assistant Administrator Fisheries, NOAA, will publish a notice of the agency's decision or action in the **Federal Register**.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: October 25, 2022.

**Samuel D. Rauch, III,**

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